United Nations A/HRC/35/22/Add.1

General Assembly

Distr.: General
15 June 2017

Original: English

Human Rights Council
Thirty-fifth session
6-23 June 2017
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Japan*

Note by the Secretariat

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression undertook an official visit to Japan from 12 to 19 April 2016. Japan has available to its Government the tools in law, especially its Constitution, to respect and ensure respect for freedom of opinion and expression. Japan's commitment to freedom on the Internet, for instance, illuminates how Japanese law and institutions can work together to prevent censorship and promote broad access to information. However, on the basis of information collected and a wide range of discussions with government officials and civil society stakeholders during his visit, the Special Rapporteur strongly urges the Government to take steps to strengthen freedom of expression even beyond the digital environment. In particular, this report highlights recommended measures that would enable the Government to promote media independence and access to information, which are both under a variety of threats as described in this report, and to adopt other specific measures to improve the climate for freedom of expression in the country.

* The present report was submitted after the deadline in order to reflect the most recent developments.

GE.17-09852(E)

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** Circulated in the language of submission only

I. Introduction

1. At the invitation of the Government of Japan, the Special Rapporteur conducted an official visit to Japan from 12 to 19 April 2016. The visit was carried out pursuant to his mandate to assess compliance with international standards on the right to freedom of opinion and expression (Human Rights Council resolution 25/2).

2. During his visit, the Special Rapporteur met with the Deputy Vice-Minister for Foreign Policy, the State Minister of the Ministry of Foreign Affairs, the State Minister of Justice who is also the State Minister of the Cabinet Office, the State Minister for Internal Affairs and Communications, and the Chairman of the Committee on Judicial Affairs of the House of Councillors. He also met representatives of the Cabinet Intelligence and Research Office, the Supreme Court, the National Police Agency, the Coast Guard, the National Center for Incident Readiness and Strategy for Cybersecurity, the Public Security Intelligence Agency, the Ministry of Education, Culture, Sports, Science and Technology, and the Personal Information Protection Commission.

3. Every country mission requires the host country to devote significant resources. The Government had originally invited the Special Rapporteur to conduct his mission in December 2015, only to cancel in the light of asserted scheduling difficulties. The Government changed course and invited the Special Rapporteur in early 2016, ultimately giving the visit attention to ensure a productive and illuminating set of discussions. The Special Rapporteur expresses his gratitude to the Government for its invitation and for the support he received.

4. In addition to the meetings with government officials, the Special Rapporteur met with representatives of the Japan Broadcasting Corporation, the Japan Commercial Broadcasters Association, the Japan Newspaper Publishers and Editors Association, the Japan Magazine Publisher Association and the Japan Internet Providers Association. He also met with journalists, academics, human rights defenders, activists and other actors in civil society. The Special Rapporteur would like to express his appreciation for the invaluable contributions by civil society representatives, such as human rights defenders and journalists, who shared their personal experiences and evaluations, particularly those who devoted substantial energy to help organize meetings with the broad representation of civil society.

5. Shortly after the mission the Special Rapporteur became aware of allegations that government officials had ordered intelligence community members to monitor at least one member of civil society who helped coordinate civil society meetings during the visit. Allegedly, information collected on civil society involvement in the visit planning was shared with officials in an internal memo. The Special Rapporteur conveyed his "grave concern at the allegations of surveillance" in an official communication to the Government, adding that "the order to monitor, and the act of monitoring, human rights defenders and their interactions with United Nations special procedures, if confirmed, would amount to an act of intimidation and reprisal for their cooperation with the United Nations, its representatives and mechanisms in the field of human rights" (UA JPN 4/2016). The Government has repeatedly denied the allegations (TK/UN/325).

II. International legal standards and main objective of mission

6. In carrying out his assessment of the situation regarding the right to freedom of opinion and expression in Japan, the Special Rapporteur is guided by international legal standards. Article 19 of the International Covenant on Civil and Political Rights, which Japan ratified on 21 June 1979, provides the most explicit guidance for the evaluation of situations for freedom of opinion and expression. Article 19 (1) of the Covenant protects everyone's right to hold opinions without interference, a right not subject to any restriction. Article 19 (2) of the Covenant protects everyone's right to seek, receive and impart information and ideas of all

kinds, regardless of frontiers, and through any media. The Special Rapporteur takes particular care to evaluate whether any given restriction imposed in line with article 19 (3) of the Covenant is provided by law and meets the requirements of proportionality and necessity in order to protect one of the enumerated legitimate interests. The right to freedom of expression has long been understood to require States not only to avoid placing limitations on that right but also to promote an environment that is conducive to that fundamental freedom. This follows from the wording of the provision itself, which in addition to establishing an obligation to "protect", also establishes an obligation to "promote".

7. Media regulation has long been a subject of global concern with respect to freedom of expression. The Human Rights Committee and other mechanisms have emphasized the importance of the State promoting media pluralism and ensuring media independence (see para. 40 of the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression; and the joint declaration of special rapporteurs on diversity in broadcasting, adopted in 2007). In 2003, international experts on freedom of expression from the United Nations, the Organization for Security and Cooperation in Europe and the Inter-American Commission on Human Rights issued a joint declaration in which they emphasized the following: "All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party." The Human Rights Committee, in its general comment No. 34, recommended that "States parties that had not already done so should establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses" (general comment No. 34, para. 39).

8. Article 19 (2) of the International Covenant on Civil and Political Rights also embraces the right of access to information held by public bodies, and the related State obligations in this regard. In particular, human rights bodies have expressed concerns about excessive restrictions on access to information and on the use of vaguely defined notions of national security and public order to justify the imposition of confidentiality, as well as other disproportionate restrictions on the right to freedom of expression in general (see A/71/373).

III. Challenges to the foundations of freedom of expression in Japan

9. Throughout the visit of the Special Rapporteur, and in interactions thereafter, government authorities affirmed the importance of the constitutional protections for freedom of expression. Indeed, the legal foundations of freedom of expression in Japan are constitutional. Article 21 of the Constitution provides that "freedom of assembly and association, as well as speech, press and all other forms of expression, are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated."[1] This protection not only provides a powerful guarantee for the freedom of expression and the media but also explicitly prohibits censorship and ensures the privacy of one's communication.

10. The Constitution's article 19 (opinion) and article 21 provide a baseline standard for policies and laws in Japan that might affect the freedom of expression. It is for this reason that proposals to revise article 19 are raising concerns in Japanese society about the commitment of authorities to a free and independent media and the protections for dissent. Leaders in the governing Liberal Democratic Party (LDP) have championed a revision of the Constitution. While much attention has been devoted to proposed revisions of article 9 concerning Japan's military

[1] Adopted on 3 November 1946, and available at http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html.

posture, a draft proposal of amendments from 2012 aims to revise article 21 so that "engaging in activities with the purpose of damaging the public interest or public order, or associating with others for such purposes, shall not be recognized."[2] This broadly worded provision would open the door to limitations on expression that could be inconsistent with article 19 of the International Covenant on Civil and Political Rights. Language allowing broad exceptions, such as "damaging the public interest or public order" could be deployed to remove wide swathes of constitutional protection under article 21. The Government already has the authority, consistent with human rights law, to limit expression where provided by law and necessary and proportionate to protect a legitimate interest such as national security or public order. Thus, language such as that proposed by LDP members would likely create a level of subjectivity and discretion that seriously risked undermining the freedom of expression.

11. The LDP draft constitutional proposals go even further by allowing for derogations in times of emergency, beyond what is permissible under international human rights law.[3] The draft proposals would enable the State to restrict certain human rights in times of emergency, with the caveat that "article 14 (against discrimination), article 18 (against servitude), article 19 (freedom of opinion), article 21 (freedom of association and speech) and other provisions relating to fundamental human rights shall be respected to the fullest extent."[4] Although derogation is permitted under international human rights law in extremely limited circumstances, the Special Rapporteur is concerned that the proposed emergency provisions are overly broad. In particular, the vagueness of the formula "respected to the fullest extent" provides limited clarity with regard to what actions would remain protected during a state of emergency.

12. The draft proposal also calls for deleting article 97 of the Constitution, which upholds the inviolability of fundamental human rights, on the grounds that such norms do not sit well with Japanese traditions. Specifically, article 97 states: "The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate."[5] The proposed deletion of this article could undermine the protection of human rights in Japan.

IV. Situation of the right to freedom of opinion and expression in Japan: main findings

13. Of all the forums in which individuals exercise the freedom of opinion and expression, Japan has shown a particularly rigorous commitment to the Internet. Japanese people enjoy a high degree of freedom online. According to data made available to the Special Rapporteur, in 2014 Internet penetration was at 91 per cent, and mobile phone penetration reached 120 per cent.[6] Users have access to high-quality, fast Internet, evidently well-distributed across the population. As an example, in January 2017 the Court rejected a man's attempt to argue for references to his arrest for child prostitution to be removed from Google search results. In a victory for the freedom of access to information, the Court held that the public's right to know outweighed the man's right to privacy, given the serious nature of his crimes.[7]

[2] Available in Japanese only at https://jimin.ncss.nifty.com/pdf/news/policy/130250_1.pdf.
[3] Ibid., draft article 98.
[4] Available in Japanese only at https://jimin.ncss.nifty.com/pdf/news/policy/130250_1.pdf; an unofficial English translation is available at www.voyce-jpn.com/ldp-draft-constitution.
[5] Available at http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html.
[6] Ministry of Internal Affairs and Communications; http://www.garbagenews.net/archives/2059042.html.
[7] Decision available in Japanese only at www.courts.go.jp/app/files/hanrei_jp/482/086482_hanrei.pdf.

14. The Special Rapporteur found during his mission that while there is a strong online and offline culture opposed to censorship, there are threats that the Government would do well to address before they develop into difficult-to-remedy crises. Journalists, activists, academics and others shared with the Special Rapporteur their concerns and anxieties that the freedom of expression is under significant stress. In particular, the Special Rapporteur found widespread concern about the independence of the media, especially its role as a public watchdog committed to investigative journalism; the manipulation of media outlets through an opaque and clique-plagued system of press clubs and incentives to practice "access journalism"; and a consolidation of secrecy laws and penalties for violations that may deter tough-minded journalism in areas such as nuclear safety and national security. Japan enjoys a system in which freedom of expression can, should and does strengthen personal exploration and opinions, innovation in the economy and creative industries, and discourse on all matters in the public interest. But, as with all systems of democratic institutions, those values must be constantly reaffirmed and strengthened by policy, practice and law. The Special Rapporteur's concern is that, in some areas, there is need for revived public and private commitment to these fundamental norms.

A. Media independence

15. Japan enjoys a well-established media with a diversity of voices and a significant presence in Japanese cultural and political life. While challenges and opportunities exist across the media landscape, it is worth thinking separately about three aspects of media independence and the capacity of the Japanese media to act as a public watchdog, namely pressure on broadcast media, which often serves as a bellwether for treatment of the media more generally; the organization of media access to government; and media solidarity.

1. Broadcast media

16. Japanese law recognizes the principle of broadcast media independence. Article 3 of the Broadcast Act[8] emphasizes that "broadcast programmes shall not be interfered with or regulated by any person except in cases pursuant to the authority provided for in laws." In keeping with this imperative of independence, the Broadcasting Ethics and Program Improvement Organization (BPO) was created to implement self-regulation, thereby avoiding government interference. The Broadcast Act, regulating both public and commercial broadcasters, and the Radio Act[9] are the principal sources of regulation in this space. As the Government has emphasized to the Special Rapporteur, these laws presuppose broadcaster autonomy and independence.

17. Under international standards, broadcast regulation should be conducted by an independent third-party actor, but the Broadcast Act, which regulates both the public Japan Broadcasting Corporation (NHK) and commercial broadcasters, lodges authority over them in the Ministry of Internal Affairs and Communications. Article 174 of the Broadcast Act states that "if the broadcaster (excluding terrestrial basic broadcasters) has violated this Act or an order or disposition based on this Act, the Minister of Internal Affairs and Communications shall set a period within three months and shall order the suspension of the operations of the broadcasting."[10] Article 76 of the Radio Act gives the Minister of Internal Affairs and Communications the power to suspend business operations of television and radio broadcasters for violations of the Broadcast Act or Radio Act.[11] While substantive norms within the law promote autonomy and independence, this institutional

[8] Available in Japanese only at www.soumu.go.jp/main_sosiki/joho_tsusin/eng/Resources/laws/pdf/0902045.pdf.
[9] Available at www.soumu.go.jp/main_sosiki/joho_tsusin/eng/Resources/laws/2003RL.pdf.
[10] Available at www.soumu.go.jp/main_sosiki/joho_tsusin/eng/Resources/laws/pdf/0902045.pdf.
[11] Available at www.soumu.go.jp/main_sosiki/joho_tsusin/eng/Resources/laws/2003RL.pdf.

framework creates the possibility of a regulatory environment that could result in undue restrictions on media freedom and independence.

18. In short, media regulation in Japan is not legally independent of government, in particular not from the political party in power at any given moment. It is in the interests of the Government, the parties, and most importantly the people of Japan that this system be remedied and independent regulation replace the current system.

19. The lack of an independent media regulator does not pose merely hypothetical problems for the broadcast sector. The possibility of government interference based on content or affiliation — even if never sought in the Government's past — looms as a potential risk for the media, possibly deterring investigations that could run afoul of political sensitivities. This concern was raised time and again during the Special Rapporteur's visit. Repeatedly, media professionals and academic and civil society observers raised a concern that the Broadcast Act mixes elements of ethical obligation with non-independent government power. Some saw official statements as making this concern valid, while some representatives from private media associations expressed the view that they do not perceive or fear pressure from the Government. The Government assured the Special Rapporteur that broadcasters are to comply with the Broadcast Act independently and autonomously, yet also maintained that as the ministry with jurisdiction over the Broadcast Act, the Ministry of Internal Affairs and Communications may lawfully apply the Act to suspend business operations of broadcasters.

20. The Special Rapporteur underlines that there is a real tension in bestowing on government the power to regulate broadcast media while at the same time emphasizing that broadcasters are to act independent of government pressure. The structural concern is based on the combination of two provisions in the Broadcast Act. Article 4 lays down basic professional norms, providing that broadcasters "not harm public safety or good morals", "be politically fair", "not distort the facts" and "clarify the points at issue from as many angles as possible". These are fair expectations that should be considered central to ethical journalism worldwide. But a non-independent government agency should not be in the position of determining what is fair. This is a matter for public debate and self-regulation through institutions such as BPO or, if deemed appropriate, an independent regulator, evaluating clear terms and requirements that meet the standards set in article 19 (3). Generally speaking, the Special Rapporteur believes that official government evaluation of such broadly stated norms would lead to deterrence of the media's freedom to serve as a watchdog, if it is not already creating such disincentives to reporting.

21. The Government takes a contrary view — expressed in February 2016 by the Minister of Internal Affairs and Communications[12] and confirmed by her subordinates in discussions during the visit — that, under article 174 of the Broadcast Act, the Government may order the suspension of a broadcaster's licence if it determines that there has been a violation of article 4 of the Act. Officials insisted that these remarks were merely a statement of law, not a threat, and a position held by previous Governments. While the interpretation of Japanese law is a matter for Japanese officials and courts, the Special Rapporteur believes that this legal view could reasonably be perceived as a threat to restrict the media.

22. While the Government has never suspended a broadcast licence on the basis of programming content under article 4, concern among media professionals has been rising at the same time as there has been an increase in publicly stated concern by the Government about the substance and tone of reporting within the Japanese media. For instance, several interlocutors noted the continued influence of a step taken by the governing party, LDP, in 2014. On 20 November 2014, the LDP leadership sent to broadcast networks a letter entitled "request for assurance of impartiality, neutrality and fairness of media reporting during the election". The

[12] Available at www.soumu.go.jp/menu_news/kaiken/01koho01_02000470.html

letter asked for "neutrality and fairness" with respect to, for example, the number, speaking time and selection of guest speakers. LDP wrote to TV Asahi less than a week later criticizing a 24 November report on the economic policies of the governing coalition that was broadcast on the programme *Hodo Station* and demanding "fair and neutral programmes". As if to emphasize the connection to broadcast regulations, the letter mentioned that the programme did not take into sufficient consideration the standard in article 4 of the Broadcast Act. Additionally, interlocutors in civil society highlighted that in April 2015, an LDP information and telecommunications "strategy panel" summoned officials from TV Asahi and NHK about two separate programmes. In one programme, a TV Asahi commentator made remarks critical of the Prime Minister's office, while another programme on NHK was alleged to contain staged material. The head of the LDP panel said the officials were summoned to answer questions about allegations that the programmes contained "distorted" materials. Such issues and discussions should be left to a body fully independent of government, such as BPO, and not be the subject of such direct forms of pressure.

23. The Special Rapporteur also received reports that the media in general feel pressured through comments made by government officials in off-the-record sessions with the media, the transcripts of which are widely circulated among journalists. For example, in an alleged off-the-record meeting with the press on 24 February 2015, the Chief Cabinet Secretary, while not naming names, reportedly criticized a television programme for not being in compliance with his interpretation of the Broadcast Act. Here is the crux of the problem: if the Government were not in control of the broadcast regulatory framework, the Chief Cabinet Secretary's statement might have less force. But in the context of government regulatory control, government criticism can reasonably be understood by the media to involve inappropriate pressure. Given the weaknesses of the media described below, such pressure, in this context, may be unreasonable.

24. A number of journalists that the Special Rapporteur met during the visit described government interference, abetted by management, to conform their reporting to official policy preferences. The Special Rapporteur received complaints with regard to what was described as an inappropriate proximity between government leaders and media executives. According to reports, the Prime Minister and the Chief Cabinet Secretary had frequent dinners with media executives. On the one hand, media access to senior officials is to be applauded, but, on the other hand, the attention given to powerful non-editorial executives, in a context of little transparency, raises concerns about the perception of conflicts between reporting and maintaining good relationships with senior officials.

25. Three well-known broadcasters and commentators with reputations for rigorous questions have left long-term positions, allegedly because of an environment hostile to, or fearful of the consequences of, criticism of the Government. Those departures are surprising in an industry in which employees stay with companies for decades. One well-known and popular commentator alleged that, due to government pressure on the stations, he is no longer invited to appear on television programmes.

26. The pressures on the private broadcast media have reportedly extended to the national public broadcaster, NHK. NHK is an independent institution that has served a central role in Japanese society for decades, and Japan should be exceedingly proud of it. The Prime Minister, with the Diet's consent, appoints the members of the NHK Board of Governors, and the Diet approves the budget of NHK. While this is common for public broadcasters, concerns emerge when the Diet is controlled by the ruling coalition, raising a perception that the broadcaster lacks independence from the Government. At his inaugural press conference, the immediate past chairman of NHK, who was chairman during the Special Rapporteur's visit, said: "It would not do for us to say 'left' when the Government is saying 'right' [in international broadcasts]." This statement, later withdrawn by the chairman, was taken by many as suggesting that the network's role is to advocate for government

policies. In a discussion held during the visit, the network's professional management team denied any such pressure, but widespread belief that there is such pressure raises concern, and it is said by some within the media to influence programming and reporting choices. Other NHK insiders did concede, however, that current political trends "impact what we broadcast". When the Special Rapporteur asked about allegations of programmes being delayed or cancelled, he was told that NHK had conducted an internal investigation into this issue but that the results of the investigation had not been made public; the Government informed the Special Rapporteur that, based on its examination, NHK had not conducted such an investigation. Seemingly newsworthy items not being reported by a public broadcaster raises a concern of government pressure and could potentially lead to deterioration of public trust in the broadcaster.

2. Print media

27. The Broadcast Act regulates only the broadcast media, and other media — especially print media — do not confront the same kind of latticework of regulation. That said, the pressures on the broadcast media have a definite spillover effect on print media in practice, if not in law, for at least one important reason: each of the major broadcast media outlets has a very substantial presence in the print market. Indeed, the most popular broadcast media are also the most popular print sources of news and information. Media owners have holdings in, and thus exercise direction over, both broadcast and print journalism. As a result, the pressures felt within the broadcast rooms extend to the print media as well, even if print media itself does not face direct regulatory pressure.

28. The Special Rapporteur received first-hand reports of newspapers delaying or cancelling the publication of articles, or demoting or transferring reporters after they had written articles critical of the Government. Several journalists told the Special Rapporteur that media outlets avoid covering topics that may lead to criticism by the Government, such as the Fukushima disaster and historical issues such as "comfort women".

29. Concerns regarding the limited access to information on risks related to the nuclear industry are not new. During Japan's 2012 universal periodic review, multiple civil society and human rights groups widely noted the lack of access to accurate information regarding the Fukushima nuclear disaster in 2011 and associated health risks.[13] The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health visited Japan in 2012 and also underlined his particular concerns regarding the lack of information on the disaster of Fukushima and recommended that attention be given to the release of disaster-related information (A/HRC/23/41/Add.3).

30. The perception of the influence of political leadership over media content is felt acutely in the coverage of historical issues. International human rights mechanisms have repeatedly called upon Japan to deal with the issue of the "comfort women" crimes of the Second World War.[14] (Further comments are made below with regard to the inclusion of the topic in history teaching in the country.) In this regard, the Special Rapporteur learned of the harassment of Takashi Uemura, one of the earliest Japanese journalists to report on the issue of "comfort women" in Korea when working for the newspaper *Asahi Shinbun*. The pressure against Mr. Uemura was especially acute following a controversy about alleged reporting errors in a different work also published by *Asahi Shinbun* regarding testimonies from Seiji Yoshida. Even if no particular inaccuracy was found in Mr. Uemura's work, his reports and the work of *Asahi Shinbun* covering these historical events were heavily attacked by conservative political groups who used the controversy surrounding Mr. Yoshida's testimony to put in question the entirety of the work done by the newspaper *Asahi Shinbun* on the matter. On 5 August 2014, *Asahi Shinbun*

[13] A/HRC/WG.6/14/JPN/3.
[14] CCPR/C/JPN/CO/6.

decided to withdraw the entirety of its reporting on the issue, including Mr. Uemura's work. Mr. Uemura himself took early retirement and moved to work in a university, which was then also attacked by groups critical of his work who called for his dismissal. Mr. Uemura and his immediate relatives were further targeted by direct violent threats. Despite receiving police protection, Mr. Uemura decided to continue his activities outside Japan. The Prime Minister himself commented on the controversy in a debate in the Diet in October, 2014, where he expressed his concerns about the alleged false reporting of *Asahi Shinbun* and urged the newspaper to make efforts to restore Japan's damaged reputation.[15]

31. The Special Rapporteur is particularly concerned that despite the offer of protection extended to Mr. Uemura, Japanese authorities repeatedly failed to express a clear and consistent condemnation of the multiple attacks suffered by Mr. Uemura and the institutions he belonged to, and failed to recognize the importance of the independent reporting activities on the topic. In this context, the Special Rapporteur recalls Human Rights Council resolution 33/2, in which the Council called upon States to ensure a safe environment for journalists including by means of publicly, unequivocally and systematically condemning violence and attacks against journalists. The indirect pressure exercised by authorities against any reporting activity relating to crimes allegedly committed during the Second World War is all the more worrying given the high level of public interest in this particular topic. Finally, the Special Rapporteur notes that Japanese media figures — reporters, editors, owners and others — could also have expressed greater support for Mr. Uemura and other reporting on the issue and made stronger appeals for the protection of all journalistic activity from any form of intimidation and harassment.

3. Professional organization and the kisha club system

32. A strong, independent, secure and cohesive media — one with dynamic elements of competition but bound by common sets of ethical and behavioural norms — would easily be able to stand up to the kinds of pressures described above. By contrast, where journalists lack those kinds of characteristics as a group, even minor forms of pressure may create an outsized sense of crisis, even if some individual journalists buck the trends. In Japan, the Special Rapporteur detected a media that lacked basic elements of confidence and unity. This appears to be related in part to the nature of employment in the media and the way journalists (and other professionals throughout the Japanese economy) are unionized. Journalists are employed by large media empires, and they tend to remain with their companies — and direct their loyalty towards them — for decades, often their entire careers. Staff may be removed from a position as a journalist and transferred to a non-journalistic role within the company. Union representation is at the company level only. While that form of labour organization is common in Japan, it is unusual compared to other forms of organizing the journalistic profession worldwide, such as in media cultures where journalists often move between media outlets, enjoying a high degree of journalistic solidarity, but not necessarily loyal to the same company year in, year out. Thus, the structure of media employment in Japan can affect efforts to withstand pressure from Government and efforts to develop cross-outlet solidarity among journalists.

33. One of the striking features of the visit was the fact that most of the journalists with whom the Special Rapporteur met requested confidentiality to speak about the situation they believe they face. They expressed fear that management would retaliate against them for raising their voices, particularly in the absence of an independent body to protect them. There is no broad union of journalists that brings together mainstream and freelance reporters, a situation which limits the possibility of solidarity and advocacy and shared purpose. Nor is there a press council that independently self-regulates the industry across all areas of journalism.

[15] http://www.japantimes.co.jp/news/2014/10/06/national/politics-diplomacy/abe-tells-asahi-shimbun-to-help-in-recovering-japans-honor/#.WPeQAvmGPcs.

34. Among the key factors undermining the media's unity and ability to gather information in the public interest is the so-called "kisha club" system. Kisha clubs, which are associations of print and broadcast journalists with exclusive access to press conferences and high-level anonymous sources, dominate Japanese media but are for the most part restricted to employees of mainstream media outlets. Paradoxically, kisha clubs are a long-standing practice in Japan, originally and voluntarily established by the local media to ensure coordination among journalists when exercising pressure on public institutions reluctant to disclose information. Their fundamental purpose is therefore described as protecting the general public's "right to know."[16] Yet the consolidation of clubs as the sole channel for gaining access to first-hand information from some public authorities, the reluctance of such clubs to accept external members and the ability of authorities in negotiating informal and exclusive access to information on a regular basis for some club members appear to have produced the opposite effect by significantly narrowing access to information of public interest.

35. The kisha clubs establish a norm of access typically limited to specific organizations of the media to the detriment of freelance and online journalism and foreign journalists. For example, some journalists claimed that police press conferences are particularly inaccessible to non-members of the kisha clubs, and lawyers have expressed concerns about the disproportionate control that these clubs may exercise over information on certain cases and about the informal proximity that develops between law enforcement authorities and journalists belonging to the club, which could possibly interfere in the outcome of court cases. Additionally, media business groups organized around Japan's national newspapers ensure that other news outlets, especially television broadcasting outlets, are brought into the kisha club system and follow its rules for newsgathering and reporting. Each of the nation's five national commercial television networks is tied to a major national daily. This limits the number of participants in the marketplace of information.

36. Foreign journalists are particularly affected by the strict observance of the rules of kisha clubs. They are typically excluded from kisha clubs and thus from the press conferences that are fundamental to the system of access to information. The Special Rapporteur received reports of foreign journalists who abandoned potentially tough-minded investigative stories to avoid being excluded from kisha groups.

B. Interference in the communication/expression of history

37. Concerns were also reported on the alleged influence of the authorities on the preparation of school textbooks relating to historical events, in particular the participation of Japan in the Second World War and the issue of "comfort women". In recent years, a number of human rights mechanisms have expressed concerns regarding the limited recognition of the issue of "comfort women" in Japan. Those mechanisms include the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW/C/JPN/CO/7-8), the Committee on the Elimination of Racial Discrimination (CERD/C/JPN/CO/7-9), the Human Rights Committee (CCPR/C/JPN/CO/6), the Committee against Torture (CAT/C/JPN/CO/2), the Committee on Economic, Social and Cultural Rights (E/C.12/JPN/CO/3), several United Nations special procedures mandate holders of the Human Rights Council and the universal periodic review (A/HRC/22/14, for example, subpara. 147.145). Human rights mechanisms have called on Japan to educate people about the issue and to condemn any attempts to deny it. For example, the Committee on the Elimination of All Forms of Discrimination against Women recommended that the Government adequately integrate the issue of comfort women in the textbooks and ensure that historical facts are objectively

[16] See, for example, http://www.pressnet.or.jp/english/about/guideline/.

presented to students and the public at large.[17] The Human Rights Committee recommended that the Government take immediate and effective legislative and administrative measures to ensure the education of students and the general public about the issue, including adequate references in textbooks.[18]

38. During the visit, the Special Rapporteur met with officials in the textbook division of the Ministry of Education, Culture, Sports, Science and Technology, where he learned about the Textbook Approval and Research Council (also known as the Textbook Authorization Research Council), a body whose members are ultimately appointed by the Minister of Education and which has the authority to evaluate textbooks based on specified standards. The Ministry chooses regular and non-regular members of the Council from among university professors and teachers in elementary, junior high and high schools and other educational institutions. Regular members of the Council are replaced every two years, while expert and non-regular members are replaced every year. There are 150 Council members, 30 of whom focus on social studies. The Council checks drafts of proposed textbooks in accordance with the Ministry's educational curriculum guidelines. One of the criteria for approval is neutrality. Once approved, a textbook may be used for four years without editing or revision.

39. During a meeting with the Special Rapporteur, the Ministry noted that there is reference made to the issue of "comfort women" in several high school world history textbooks. Outside experts presented the Special Rapporteur with reports that references made to the issue of "comfort women" are being edited out of junior high school textbooks, where the teaching of Japanese history is compulsory. In one instance, a reference to the issue of "comfort women" is accompanied by a disclaimer that indicates the Government's contrary view that there was no forcible taking of women.

40. The Government of Japan first accepted responsibility for the issue of "comfort women" in 1993, when the Government issued a public apology.[19] As a result of that acknowledgment, the issue of "comfort women" was first included in textbooks in 1997, with all seven approved junior high school history textbooks including a description of the issue. However, the Special Rapporteur was informed that in 2002, only three of the approved textbooks included a reference to the issue. In 2006, the term "comfort women" was reportedly dropped from most textbooks, with a reference to or description of the issue remaining in only two. The Government confirmed that while there were no descriptions of the issue of "comfort women" in any textbooks used from 2012 to 2015, one textbook in use since 2016 does contain a description.

41. Government influence over how textbooks treat the reality of the crimes committed during the Second World War undermines the public's right to know and its ability to grapple with and understand its past. The observance of the right of access to information and the public dissemination of information on past historical events of gross human rights violations are concerns underlined by multiple human rights mechanisms.[20] Regional courts have underlined the close relationship between the right to truth and the right to access information.[21] The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law include, as a measure of satisfaction, inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels (see General Assembly resolution 60/147, annex). The principles for the protection and

[17] CEDAW/C/JPN/CO/7-8, para. 29.

[18] CCPR/C/JPN/CO/6, para. 14.

[19] Available at www.mofa.go.jp/policy/women/fund/state9308.html.

[20] A/68/362.

[21] See, for example, Inter-American Court of Human Rights, *Gomes Lund and others ("Guerrilha do Araguaia") v. Brazil*, Judgment of 24 November 2010.

promotion of human rights through action to combat impunity further provides that a people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State's duty to, inter alia, facilitate knowledge of those violations, and that such measures should be aimed at preserving the collective memory from extinction (see E/CN.4/2005/102/Add.1).

42. On the topic of history teaching, the Special Rapporteur in the field of cultural rights concluded in a 2013 report (A/68/296) that policies restricting information on historical events are at odds with the right to education; the right of all individuals, groups and peoples to enjoy and to have access to their own cultural heritage as well as that of others; and the right to freedom of opinion and expression. In that study the Special Rapporteur recommended that processes for reforming curricula and formulating history teaching standards must be transparent and include the input of practitioners and professional associations. Appointments to and the functioning of committees and sections of ministries dealing with such matters should also be transparent and ensure that there is no conflict of interest.

C. Access to information

43. Japanese law includes mechanisms to protect the public's right to know, including the Act on Access to Information Held by Administrative Organs, which entered into force in 2001.[22] The establishment of the Information Disclosure and Personal Information Protection Review Board was considered an important feature of the new law as such mechanisms facilitate the challenging of decisions of officials to deny access to information.[23] In 1981, long before the adoption of the Act, local authorities in Kanagawa established a freedom of information system.[24]

44. Despite that positive step, the adoption of the Act on the Protection of Specially Designated Secrets (hereinafter referred to as "the Secrets Act") in 2014[25] diminished the scope of protection of the right to access to information by expanding the capacity of government officials to establish and enforce confidentiality. Prior to the adoption of the Secrets Act, the previous mandate holder raised concerns about the process by which the Act was being adopted and the ways in which it deals with the public's right to know.[26] Specifically, he noted that the definition of protected information in the draft law was reportedly very broad and unclear. He expressed grave concern that the law could curtail the activities of journalists and would certainly intimidate whistle-blowers because of the provisions relating to penalties for revealing State secrets.[27] The Human Rights Committee also expressed concern regarding the Act, noting that it contains a vague and broad definition of the matters that can be classified as secret and general preconditions for classification, and sets high criminal penalties that could generate a chilling effect on the activities of journalists and human rights defenders.[28]

45. During the visit, the Special Rapporteur held constructive and informative meetings with those responsible for implementing the Secrets Act, but still has concerns. First, as the Human Rights Committee noted in its 2014 periodic review, the Secrets Act does not adequately define the matters that can be designated secret or the preconditions for classification. The Government's implementation standards[29] have thoughtfully sought to clarify the four specific categories (defence,

[22] Available at www.soumu.go.jp/main_sosiki/gyoukan/kanri/translation4.htm.
[23] Available at www.freedominfo.org/2002/07/case-study-japan-breaking-down-the-walls-of-secrecy.
[24] The Birth of Freedom of Information Act in Japan: Kanagawa 1982, available at http://dspace.mit.edu/bitstream/handle/1721.1/7539/JP-WP-03-03.pdf?sequence=1.
[25] Available at www.japaneselawtranslation.go.jp/law/detail_download/?ff=09&id=2543.
[26] See A/HRC/27/72, p. 83, and JPN 1/2013, available at spcommreports.ohchr.org.
[27] JPN 1/2013.
[28] CCPR/C/JPN/CO/6, para. 23.
[29] Available, in Japanese only, at www.cas.go.jp/jp/tokutethimitsu/pdf/h261014_siryou20.pdf, and www.cas.go.jp/jp/tokutethimitsu/.

diplomacy, prevention of specified harmful activities, and prevention of terrorist activities) under which information may be designated as secret, but the specific subcategories remain overly broad. The subcategories under defence include (a) signal information, image information and other important information, and (b) assessments, plans or studies relevant to the defence capability build-up. Those under diplomacy include (a) policies or contents of negotiations or cooperation with the Government of a foreign country or an international organization, which are important to national security, such as the protection of the lives and bodies of citizens or territorial integrity, and (b) important information pertaining to the protection of the lives and bodies of citizens, territorial integrity or peace and security of the international community. The Special Rapporteur is concerned that the repeated use of the words "important" and "relevant to" fails to better define the four broad categories listed in the law itself.

46. In addition, the Secrets Act puts journalists and their sources at risk of penalties. Of particular concern are articles 22 and 25 of the Act. Article 22 the Act provides as follows:

(1) When this Act is applied, its interpretation must not be expanded to unfairly violate the fundamental human rights of the citizens, and due consideration must be paid to the freedom of news reporting or news coverage, which contributes to guaranteeing the citizens' right to know.

(2) The act of news coverage by persons engaged in publishing or news reporting shall be treated as an act in pursuit of lawful business as long as it has the sole aim of furthering the public interest and is not found to have been done in violation of laws or regulations or through the use of extremely unjustifiable means.

47. While article 22 acknowledges the freedom of expression, it remains likely to concern journalists, as it does the Special Rapporteur. Although officials explained that the use of the term "sole aim" in article 22 should be understood to mean "main aim," the Special Rapporteur remains concerned about the way in which the article would be interpreted by the Government in cases involving unauthorized disclosure (e.g., whistle-blowing). The Secrets Act further provides that reporters who attempt to gain access to secret information would be protected if they were not deemed to have employed "extremely unjustifiable means", language referring to a Supreme Court of Japan decision of 31 May 1978 that means, according to information provided by the Government, "ways which impair substantially the personality of an individual who is the object of newsgathering activities". The Government pointed to the official commentary of the Secrets Act, which gives examples of "lawful activities in the pursuit" of newsgathering. While those examples are helpful and reassuring, they may not cover every instance of newsgathering, and they would be more reassuring if provided in the law itself.

48. Article 25 of the Secrets Act stipulates, in part, that a person who conspires with, induces or incites another person to disclose a specially designated secret or to acquire such a secret by deceiving, assaulting or intimidating a person or by theft or trespass will be punished by imprisonment with work for not more than five years. The Special Rapporteur was pleased to hear from officials that the Government does not intend to apply the harsh penalties stipulated in article 25 to journalists. Furthermore, the disclosure of information by journalists will not be punished as long as the information is in the public interest and is acquired in the good faith and lawful pursuit of journalism. However, the Special Rapporteur remains concerned that those understandings were not reflected in the law.[50]

49. Apart from protections available for improper designations, whistle-blower protections generally appear weak. This remains an area of some uncertainty and concern, in particular the interaction of the Secrets Act with the general Whistle-blower Protection Act.[51] The Whistle-blower Protection Act prevents

[50] See A/70/361, and the Global Principles on National Security and the Right to Information.

[51] Available at www.cas.go.jp/jp/seisaku/hourei/data/WPA.pdf.

companies from firing, reducing the pay of or giving "disadvantageous treatment" to whistle-blowers. Disadvantageous treatment is vague; protections should be detailed explicitly in law, providing whistle-blowers and others with clarity about the nature of the protection that they may seek. In addition, it is unclear whether whistle-blowing regarding unethical behaviour is protected under the Secrets Act because it is not explicitly stated in the list of protected "reportable facts". Therefore, the Special Rapporteur is concerned that whistle-blowing regarding unethical behaviour is no protected under either the Secrets Act or the Whistle-blower Protection Act. Moreover, whistle-blowing does not always involve specific individual wrongdoing, but it may uncover hidden information that the public has a legitimate interest in knowing. The Secrets Act does not protect whistle-blowers who disclose public interest information.

90. In addition, the oversight mechanisms established by the Secrets Act are not sufficiently independent and are not guaranteed access to the information in order to determine the appropriateness of its designation as secret. The standing committees in the Diet are the only mechanism outside of the administrative branch with oversight ability. The Government has discretion over whether to grant the Diet committees access to specially designated State secrets. It was emphasized by a number of interlocutors that the committees are left without sufficiently specific information to determine whether the designation of information as secret was appropriate. Further, the recommendations of the committees are not binding in nature. The Government subsequently noted to the Special Rapporteur that the parliamentary committees of the Board of Oversight and Review of Specially Designated Secrets met a total of 22 times, with the disclosure of seven specially designated secrets and only one denial of a request for disclosure.

91. The weakness of the oversight mechanisms was illustrated in the first annual reports of the Boards of Oversight and Review of Specially Designated Secrets of both Diet houses, released in March 2016. The boards examined a total of 382 designations of specially designated secrets. By the end of 2014, 10 government organizations designated approximately 189,000 pieces of such documents. As part of the examination, the boards referred to related documents, including a government record book pertaining to the designation of specific pieces of information as State secrets, and interviewed officials of those 10 organizations. However, most of the accounts contained in the Government's record book about the designation of specific pieces of information as State secrets were too vague to help the boards judge whether the designation was appropriate.

92. The Special Rapporteur is disappointed that his requests to meet with members of the oversight committees during his visit were denied. In order to assist Japan in the review of the implementation of the Secrets Act, the Special Rapporteur further recalls recommendations made in his recent report which addresses the protection of sources of information and whistle-blowers (A/70/361) and the standards provided by the Global Principles on National Security and the Right to Information. Accordingly, national legal frameworks establishing the right to access information held by public bodies should be aligned with international human rights norms. States may find it appropriate to apply specific rules to public national security disclosures. To be consistent with article 19 (3) of the International Covenant on Civil and Political Rights, they should nonetheless strictly adhere to the standard that restrictions be necessary and proportionate to protect national security. States are also called upon to promote public interest disclosures that outweigh any identifiable harm to a legitimate national security interest.

D. Discrimination and hate speech

93. In recent years, Japan has been faced with an upsurge in hateful expression directed towards minorities, especially ethnic Koreans residing in Japan.

On 30 March 2016, the Ministry of Justice released a report on hate speech rallies.[32] According to the report, there were 1,152 demonstrations in 29 prefectures across Japan that reportedly involved associations targeting specific races and ethnicities between April 2012 and September 2015. A total of 237 such demonstrations were held between April and December 2012, 347 in 2013, 378 in 2014, and 190 in the first nine months of 2015. Under article 20 of the International Covenant on Civil and Political Rights, advocacy of hatred on the basis of national, racial or religious grounds, while reprehensible, is not an offence in itself. Such advocacy becomes subject to prohibition only when it constitutes incitement to discrimination, hostility or violence.

54. During the visit, the Special Rapporteur met with the Committee on Judicial Affairs at the National Diet and had the opportunity to learn about proposed legislation to combat hate speech against minorities. In May 2016, the Diet adopted the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan,[33] which condemns unjustly discriminatory language but does not make it illegal. The law does not have clauses that are binding and makes no mention of penalties for acts such as holding a hate rally in public spaces. Instead, the law was enacted to spread awareness among the general public and promote understanding and cooperation through further human rights education and awareness-raising activities, and to strengthen efforts to eliminate unfair discriminatory speech and behaviour.

55. Discriminatory acts, however, remain the root of the problem. Even so, Japan does not have comprehensive legislation to combat discriminatory practices such as those related to employment and housing. Both the Committee on the Elimination of Racial Discrimination in 2014[34] and the Committee on the Elimination of Discrimination against Women in 2016[35] recommended that Japan adopt anti-discrimination laws. Legislation prohibiting acts of discrimination is the critical first step towards dealing with hate speech. Once anti-discrimination legislation is in place, broad government action against hateful expression — such as educational and public statements against hatred — can have a real impact on the fight against discrimination. In that regard, the Special Rapporteur recalls the recommendations made by the previous mandate holder (see A/67/357), which underlined that, beyond providing legal instruments to respond to incitement to hatred, an effective response to hate speech must always include fostering more open and critical speech to counter such incitement: "The promotion and protection of the right to freedom of expression must, however, go hand in hand with efforts to combat intolerance, discrimination and incitement to hatred…While laws are certainly necessary and an important component in addressing hate speech, they should be complemented by a broad set of policy measures to bring about genuine changes in mindsets, perception and discourse."

E. Restrictions on election campaigns

56. During the visit, the Special Rapporteur heard repeated concerns involving long-standing restrictions imposed on political campaign activities. The Government does not apply the restrictions on Internet campaigning, which is obviously vital to enhance the public's ability to access candidate information and participate fully in political life.

57. However, the Public Office Election Act continues to impose restrictions on regular campaign activities such as door-to-door visits and illegal distribution of electoral documents during an electoral period.[36] The Human Rights Committee has

[32] Available in Japanese only at www.moj.go.jp/content/001201158.pdf.
[33] Available at www.moj.go.jp/content/001199550.pdf.
[34] CERD/C/JPN/CO/7-9.
[35] CEDAW/C/JPN/7-8.
[36] Available in Japanese only at law.e-gov.go.jp/htmldata/S25/S25HO100.html.

called attention to the need for Japan to repeal legislation that imposes unreasonable restrictions on political campaigning, in particular since such restrictions are premised on the idea of protecting public welfare but in fact undermine the right to freedom of expression and the right to take part in the conduct of public affairs.[57] The regulation of campaigns may be permitted, in particular to ensure an open space in the electoral process, but the current restrictions appear unnecessary and disproportionate. Moreover, as noted above, the imposition of a notion of neutrality and balance in the work of the media by authorities and political groups has been used to interfere in the media coverage on political affairs during electoral periods, as media managers are being pressured over a perceived lack of neutrality owing to certain journalistic activities, ultimately resulting in self-censorship in some cases.

F. Public demonstrations

58. Japan enjoys a strong and admirable culture of public demonstration, sometimes involving quiet protests at street corners or marches whose small size is belied by the blaring of megaphones. Tens of thousands have been known to protest at the Diet. Nonetheless, some activists shared concerns about unnecessary restrictions on protest, the recording of protesters, failure to deal with those who interfere with protests from the right-wing of the political spectrum, allegations of surveillance of the Muslim community and other issues. The Special Rapporteur shared those concerns with members of the National Police Agency, who engaged in an open discussion with him. The Special Rapporteur remains committed to following those issues and continuing a dialogue about Japan's commitment to allowing full space for public protest.

59. The Special Rapporteur also shared his concerns about public protest, in particular in Okinawa, with the Japan Coast Guard. He communicated to the authorities in 2015 his concern regarding allegations of disproportionate restrictions being placed on protest activity in Okinawa.[58] The Special Rapporteur has received credible reports of excessive use of force and multiple arrests. He was especially concerned by reports of the use of force against journalists filming the protests. Just as the protection of national security provides for the implementation of restrictions in certain areas, careful review processes must also be in place to avoid undue restrictions. Particular attention must be paid to all the reported events of confrontation with journalists, considering the vital importance of ensuring full access to information to the public on the ongoing confrontations. The Special Rapporteur has received significant reports of continuing restrictions on expression and protest in Okinawa, which raise legitimate concerns about the availability of space for dissent and access to information for those throughout Japan about the situation there.

60. One recent case is relevant to the concerns expressed by the Special Rapporteur during the visit. The case involves Hiroji Yamashiro, the head of the Okinawa Peace Action Centre, who was arrested in October 2016 on suspicion of cutting barbed wire near a United States military helipad construction site in Higashi, northern Okinawa. He was also charged with obstructing relocation work at Camp Schwab in the Henoko area of Nago and injuring an official of the Ministry of Defence by grabbing the official's shoulders and shaking him. Mr. Yamashiro pleaded not guilty to the charges of forcible obstruction of business and assault but admitted to the charge of property destruction for cutting the barbed wire. Mr. Yamashiro was detained for five months without trial. Such a lengthy detention seems disproportionate to Mr. Yamashiro's alleged actions. Mr. Yamashiro was released from custody in March 2017, but the Special Rapporteur is concerned that such government action could quell expression, in particular public protest and dissent.

[57] CCPR/C/JPN/CO/5.

[58] A/HRC/31/79, JPN 1/2015, available at spdb.ohchr.org/hrdb/31st/public_-_AL_Japan_15.06.15_(1.2015).pdf.

V. Conclusions and recommendations

61. Throughout all of his activities, the Special Rapporteur reiterates the importance of freedom of opinion and expression in a democratic society. He emphasizes that the protection of the right to freedom of opinion and expression is at the heart of the promotion and protection of human rights. The historical commitment to human rights in Japan placed the country in an important position of leadership, both regionally and globally. As already stated, its commitment to protecting and promoting the free exchange of information and ideas was certainly vital for the economic and scientific development experienced by the country over the past decades. The Constitution of Japan remains perhaps the key element in that historical process, given the strong protections established for core civil and political rights, in particular the right to freedom of expression.

62. Despite this very solid base, which includes, importantly, the lack of governmental censorship, the Special Rapporteur has identified significant worrying signals. The direct and indirect pressure that government officials can exert over the media, the limited space available for debating some historical events and the increased restrictions on information access based on national security grounds require attention in order to avoid undermining the democratic foundations of Japan.

63. The Special Rapporteur emphasizes that Japan presents an important model in the area of freedom on the Internet. The country has a high level of Internet penetration, and the Government does not engage in content restrictions. The very low level of interference with digital freedoms illustrates the Government's commitment to freedom of expression.

64. To further strengthen the democratic foundations of Japan, however, the Special Rapporteur, in a spirit of constructive engagement, recommends the steps below.

A. Media independence

65. The Special Rapporteur suggests a review of the current legal framework governing the broadcast media and, in particular, recommends that the Government review and repeal article 4 of the Broadcast Act in order to strengthen media independence by removing the legal basis for Government interference. In tandem with such a step, the Special Rapporteur strongly urges the Government to develop the framework for an independent regulator of the broadcast media.

66. The Special Rapporteur calls upon authorities and media groups to publicly express their rejection of any form of threat and intimidation against journalists or other professionals carrying out investigative reporting work.

67. Public and private broadcast media groups, as well as print media groups, must remain vigilant against any form of direct and indirect pressure on their editorial activities, in particular by guaranteeing their full support and protection to journalists investigating and commenting on controversial topics. Particular attention must be paid to the support of journalists investigating issues of great sensitivity, such as protests against military activity in Okinawa, the impact of nuclear activities and disasters, and Japan's role in the Second World War.

68. Media freedom and independence cannot be secured without greater solidarity among journalists. The Special Rapporteur calls upon journalist associations to discuss the impact of the current kisha club system and for all in a position of responsibility to, at the very least, broaden the membership to allow the widest possible range of journalists to participate. The Special

Rapporteur also calls for journalists to assess how the promotion of independent reporting could be furthered by the promotion of associations among professionals working in multiple media.

B. Interference in history teaching and reporting

69. **The Special Rapporteur calls upon the Government to refrain from interfering in the interpretation of historical events in educational materials and support efforts to inform the public on these serious crimes, paying particular attention to events related to Japan's involvement in the Second World War. The Government should meaningfully contribute to the independence of public education by ensuring full transparency in the school curricula elaboration and reconsidering how the Textbook Council itself could be insulated from Government influence.**

70. **In order to further review and enhance its efforts to clarify and ensure public information on past episodes of gross human rights violations, including on the issue of "comfort women", the Government could consider requesting a visit of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.**

C. Election campaigns and public demonstrations

71. **The Special Rapporteur calls for revisions to bring the Public Office Election Act into compliance with international human rights law by repealing provisions that impose disproportionate restrictions on political campaign activities.**

72. **Based on his visit and information subsequently received in connection with the visit, the Special Rapporteur is particularly concerned about the pressures placed on public protest in Okinawa. While he understands the pressures placed upon them, public authorities, especially law enforcement authorities, should make every effort to enable such protest and dissent, including the coverage of such activities by the media. Public demonization of protesters, including by imposing disproportionate penalties on them, undermine the fundamental freedom of all Japanese to express their opposition to public policies.**

D. The Act on the Protection of Specially Designated Secrets

73. **The Special Rapporteur urges continued work and vigilance to avoid the possibility that information is designated as secret if its disclosure would not jeopardize the national security of Japan.**

74. **The Special Rapporteur was pleased to hear from officials that the Government does not intend to apply the harsh penalties in article 25 to journalists, but urges the Government to amend the law itself to ensure against any chilling effect on the work of journalists. The Special Rapporteur was also pleased to hear from officials that the disclosure of information by journalists would not be punished as long as the information was in the public interest and was acquired in the good faith and lawful pursuit of journalism. However, in keeping with the suggestion of the Human Rights Committee, the Special Rapporteur encourages the Government to include an exception in the law to guarantee that no individual — neither journalists nor government employees — is punished for disclosing information of public interest that does not harm national security.**

75. **At a minimum, the provisions penalizing disclosures by those authorized to have access to designated secrets should include an exception for individuals**

who disclose information in the good faith belief that the release of the information would be in the public interest and would not jeopardize the national security of Japan.

76. Beyond law, the right to information also requires a bedrock of social and organizational norms that promote the reporting of wrongdoing or other information in the public interest. The strengthening of such norms requires training at all levels of organizations; supportive policies and statements from political and corporate leaders, international civil servants, the courts and others; and accountability in cases of reprisals.

77. The Lower House has called on the Government to improve its accountability, and the Special Rapporteur calls on the Government to pursue that goal by establishing independent oversight boards equipped with experts.

E. Discrimination and hate speech

78. The Special Rapporteur urges Japan to adopt a broadly applicable anti-discrimination law.

79. The Special Rapporteur respects Japan's efforts to address the issue of hate speech through, for example, educational and public statements by the Government against hatred. Speech itself should not be limited unless it falls within the purview of article 20 of the International Covenant on Civil and Political Rights and meets the requirements of article 19 (3) of that mechanism.

F. Digital rights

80. As the Government considers legislation related to wiretaps and new approaches to cybersecurity, the Special Rapporteur hopes that the spirit of freedom, communication security and innovation online is kept at the forefront of regulatory efforts. It is important that the Diet engage in open debate regarding such efforts and that the law respect standards for protecting the rights to privacy and freedom of expression.

81. Legislation must stipulate that State surveillance of communications must only occur under the most exceptional circumstances and exclusively under the supervision of an independent judicial authority. In particular, the law should adhere to basic principles that ensure that any electronic or digital surveillance not be applied on any discriminatory basis, such as to target or monitor minority groups.